

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	
MORNINGSTAR EDUCATIONAL NETWORK	)	
	)	File No. BPLIF-19951020E1
For Authority to Construct New Instructional	)	
Television Fixed Service Station G Group	)	
Channels, Olympia, Washington	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 23, 2003**

**Released: September 24, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Memorandum Opinion and Order*, we address the petitions to deny filed on September 5, 1997, by Hispanic Information and Telecommunications Network, Inc. (HITN) and its lessee of excess airtime capacity, Wireless Holdings, Inc. (WHI).<sup>1</sup> Both HITN and WHI seek denial of the application filed by Morningstar Educational Network. (Morningstar) for authority to construct new Instructional Television Fixed Service (ITFS) station at Olympia, Washington.<sup>2</sup> For the reasons stated below, we grant the HITN and WHI Petitions.

2. *Background.* ITFS stations are intended primarily to provide a formal educational and cultural development in aural and visual form.<sup>3</sup> ITFS licensees make use of the spectrum to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of users.<sup>4</sup> In 1998, the Commission adopted technical rule changes designed to provide ITFS licensees flexibility to employ digital technology in delivering two-way communications services including high-speed and high-capacity data transmission and Internet service on a regular basis.<sup>5</sup>

3. On March 1, 1984, HITN filed an application for a new ITFS station on the G Group channels at Seattle, Washington.<sup>6</sup> That application was granted on April 27, 1992.<sup>7</sup> On August 4, 1994,

<sup>1</sup> Petition to Deny of Hispanic Information and Telecommunications Network, Inc. (filed Sept. 5, 1997) (HITN Petition). Petition to Deny of Wireless Holdings, Inc. (filed Sept. 5, 1997) (WHI Petition). WHI holds an airtime lease agreement with HITN, WLX546, at Seattle, WA.

<sup>2</sup> Application for New ITFS Station at Olympia, Washington, File No. BPLIF-19951020, Facility ID No. 80877 (filed Oct. 20, 1995).

<sup>3</sup> 47 C.F.R. § 74.931.

<sup>4</sup> *Id.*

<sup>5</sup> See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order*, 13 FCC Rcd 19112 (1998).

<sup>6</sup> File No. BPIF-19840301DF.

<sup>7</sup> Broadcast Actions, Report No. 42810, *Public Notice* (rel. Apr. 30, 1992).

HITN filed an application requesting a protected service area for Station WLX546.<sup>8</sup> On August 31, 1995, the Commission granted HITN's request for a protected service area (PSA).<sup>9</sup> On December 18, 1996, the former Video Services Division, Mass Media Bureau denied HITN's request for extension of time to construct Station WLX546 and cancelled the construction permit.<sup>10</sup> HITN filed a petition for reconsideration of that action on January 23, 1997.<sup>11</sup> That petition for reconsideration remains pending.

4. On October 20, 1995, Morningstar filed the captioned application for a new ITFS station on the G Group channels at Olympia, Washington.<sup>12</sup> The application appeared on Public Notice as accepted for filing on August 1, 1997.<sup>13</sup> On September 5, 1997, HITN and WHI filed their Petitions against Morningstar's application. Morningstar opposed the WHI Petition on September 23, 1997.<sup>14</sup> WHI filed a Reply to the Opposition on October 3, 1997.<sup>15</sup>

5. *Discussion.* HITN and WHI allege that the proposed Morningstar facility will cause substantial interference to the PSA of Station WLX546.<sup>16</sup> Morningstar does not challenge that claim but argues (1) that HITN was not entitled to a PSA at the time Morningstar filed its application,<sup>17</sup> and (2) the interference issue is now moot because the construction permit for Station WLX546 has been cancelled.<sup>18</sup>

6. Based on the totality of the record before us, find that Morningstar's proposed ITFS station would cause interference to the PSA of Station WLX546. With regard to the HITN engineering showing, however, we find that the analysis is flawed because the effective radiated power (ERP) attributed to Station WLX546, and used in calculating the interference contour, is more than 3 dB less than what is licensed to HITN.<sup>19</sup> The WHI engineering documentation, on the other hand, sufficiently demonstrates that interference would be caused. In this connection, we note that the technical parameters for both Station WLX546 and Morningstar's proposed station used in the WHI interference analysis are correct. The resultant interference contour, derived from the comparison of the two stations' (desired and undesired) radiation characteristics and their ERPs, shows that the proposed Morningstar facility will cause interference to approximately 25 percent of the PSA for Station WLX546.<sup>20</sup> This area of interference can be described as the area contained in a crescent shaped envelope, beginning at approximately 80 degrees (one tip) on the perimeter and following along the perimeter of the PSA and

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<sup>8</sup> File No. BNPIF-19940801DR.

<sup>9</sup> Broadcast Actions, Report No. 43591, *Public Notice* (rel. Sep. 13, 1995).

<sup>10</sup> Broadcast Actions, Report No. 43895, *Public Notice* (rel. Dec. 24, 1996).

<sup>11</sup> Petition for Reconsideration, File No. BPIF-19950523DT (filed Jan. 23, 1997) (HITN Reconsideration Petition).

<sup>12</sup> *Id.*

<sup>13</sup> See ITFS Public Notice Report No. A-24046A (rel. Aug. 1, 1997).

<sup>14</sup> Opposition to the Petition to Deny (filed Sept. 23, 1997) (Opposition). This Opposition is timely filed due to an unopposed extension of time request (filed Sept. 19, 1997) by Morningstar.

<sup>15</sup> Reply to Opposition (filed Oct. 3, 1997) (Reply).

<sup>16</sup> 47 C.F.R. §§ 74.903(d). Pursuant to Section 74.903(d) of the Commission's Rules, harmful interference will be considered present when a free space calculation determines that such desired to undesired ratio is less than 45 dB at points within the station's PSA.

<sup>17</sup> Opposition at 2.

<sup>18</sup> *Id.*

<sup>19</sup> See HITN Petition at Exhibit 2.

<sup>20</sup> See WHI Petition at Exhibit A, Page 1 of 1.

ending at 270 degrees (other tip).<sup>21</sup> The maximum width of the envelope (the belly) is approximately 14 miles. The remaining areas of interference are small pockets located in the northeast quadrant of the PSA.

7. Morningstar's request that we revisit the grant of a PSA to Station WLX546 must be rejected as an untimely collateral effort to reconsider an action that was final more than two years before. Section 405 of the Communications Act, as amended, provides that a petition for reconsideration of any Commission action or any action by delegated authority within the Commission must be filed within thirty days of public notice of that action.<sup>22</sup> This requirement is codified at Section 1.106(f) of the Commission's Rules.<sup>23</sup> Public notice of the grant of HITN's request to be afforded a PSA was given on September 13, 1995.<sup>24</sup> Morningstar first challenged the grant of the PSA to HITN on September 23, 1997.<sup>25</sup> This challenge must be rejected as untimely, because the grant of this PSA to HITN became final on October 13, 1995. Consequently, Morningstar's attempt to attack whether Station WLX546 should have been granted PSA provides no basis for authorizing Morningstar's proposed facilities under the circumstances presented.

8. Lastly, Morningstar contends that given that the Commission canceled the license for Station WLX546 on December 18, 1996, WHI's claim for protection is moot.<sup>26</sup> We disagree. We note, as an initial matter, that the cancellation of HITN's construction permit is not a final action due to the pendency of HITN's reconsideration petition.<sup>27</sup> Further, the interference protection rights for Station WLX546 vis-à-vis Morningstar's proposed facilities were established when Morningstar filed the subject application and, was not affected by subsequent Commission action regarding the Station WLX546 authorization. Pursuant to Section 74.903 of the Commission's Rules,<sup>28</sup> an application for an ITFS station must protect previously proposed facilities from interference and will not be granted if interference is predicted to occur. Given that applications must be filed only during designated filing windows,<sup>29</sup> it is vital that applicants comply with that rule as of the time they file the original application.<sup>30</sup> At the time of the filing of the Morningstar application for Olympia, Station WLX546 was entitled to interference protection. In order for Morningstar's application to have been acceptable for filing, it would have had to comply with the Commission's interference protection rules at the time of filing. The Morningstar Application did not provide this showing. Thus, Morningstar's application was defective when filed.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 74.912 of the Commission's Rules, 47

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<sup>21</sup> These bearings on the perimeter of the PSA are in reference to True north. The PSA is defined by 47 C.F.R. § 74.902(d).

<sup>22</sup> 47 U.S.C. § 405.

<sup>23</sup> 47 C.F.R. § 1.106(f).

<sup>24</sup> See Grant PN.

<sup>25</sup> See Opposition.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> See HITN Reconsideration Petition.

<sup>28</sup> 47 C.F.R. § 74.903.

<sup>29</sup> See Amendment of Part 74 of the Commission's Rules with Regard to the Instructional Television Fixed Service, *Report and Order*, MM Docket No. 93-24, 10 FCC Rcd 2907 (1995).

<sup>30</sup> See Educational Television Association of Metropolitan Cleveland, Inc., *Memorandum Opinion and Order*, FCC 03-171 (rel. Jul. 15, 2003) at ¶ 7; Albion Community Development Corporation, *Order on Further Reconsideration*, 18 FCC Rcd 7714 (WTB PSPWD 2003).

C.F.R. § 74.912, that the Petitions to Deny filed by Hispanic Information and Telecommunications Network, Inc. and Wireless Holdings, Inc. on September 5, 1995 ARE GRANTED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 74.903 and 74.912 of the Commission's rules, 47 C.F.R. §§ 74.903, 74.912, that the application of Morningstar Educational Network (File No. BPLIF-19951020E1) IS DISMISSED.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau